

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

AIRCRAFT SERVICE INTERNATIONAL, INC.

Employer

and

CLIFFORD J. MESAROS, An Individual

Petitioner

and

CASE 7-RD-3317

**LOCAL 299, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AFL-CIO**

Union ^{1/}

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, hereinafter referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, ^{2/} the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. ^{3/}
3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act. ^{4/}
5. The following employees of the Employer constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act: ^{5/}

All full-time and regularly scheduled part-time ramp agents, GSE dealers, and GSE mechanics employed by the Employer at its facility located at Detroit Metropolitan Airport for Northwest Airlines; but excluding all other employees, office-clericals, private secretaries, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted under the direction and supervision of the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period

because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military service of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

LOCAL 299, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AF L-CIO

LIST OF VOTERS^{*}

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision 3 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. The list must be of sufficient clarity to be clearly legible. The list may be submitted by facsimile transmission, in which case only one copy need be submitted. In order to be timely filed, such list must be received in the **DETROIT REGIONAL OFFICE** on or before December 19, 2001. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court, 1099 14th Street N.W., Washington D.C. 20570**. This request must be received by the Board in Washington by **December 26, 2001**.



Dated December 12, 2001
at Detroit, Michigan

/s/ William C. Schaub, Jr.
Regional Director, Region Seven

Section 103.20 of the Board's Rules concerns the posting of election notices.
Your attention is directed to the attached copy of that Section.

*If the election involves professional and nonprofessional employees, it is requested that separate lists be submitted for each voting group.

- 1/ The names of the Employer and Union appear as corrected at the hearing.
- 2/ The Union filed a brief, which was carefully considered. I have not, however, considered non-record evidence frequently referred to by the Union in its brief.
- 3/ The Employer is engaged in the operation of fueling commercial aircraft at its facility located at Detroit Metropolitan Airport.
- 4/ The Employer and Union contend that the instant petition should be dismissed under the principles of contract bar. The Petitioner contends to the contrary.

The Union has a collective bargaining agreement with another company, Signature Flight Support, effective by its terms from November 24, 1998, through November 23, 2001. The agreement was extended by agreement of the parties through January 2002. Signature provided not only fueling services, but also cleaned aircraft, handled baggage, and provided ground service equipment for several airlines, including Northwest, ComAir, Mesaba, Fed-Ex, and UPS at Detroit Metropolitan Airport. Signature also provided fueling services for privately owned aircraft at the airport.

In September 2000, Signature lost its bid to continue providing services to Northwest Airlines at Detroit Metropolitan Airport. The contract was awarded to the Employer, a company completely unrelated to Signature at the time. It appears the Employer hired employees of Signature shortly after the award of the contract, subject to a 120-day probationary period. On September 6, 2000, the Union and the Employer entered into a "recognition agreement" whereby the Employer agreed to recognize the Union as the exclusive collective bargaining representative of the employees in the petitioned-for unit. However, the Employer did not agree to assume the collective bargaining contract between Signature and the Union, although it did agree to a union security clause and a dues checkoff provision with the Union. The Employer further agreed: "Negotiations regarding wages, hours, check-off, union security, seniority, grievance procedure, discharges and all general working conditions shall be entered into no later than September 26, 2000."

Indeed, the Employer and Union entered into negotiations about September 26, 2000, and exchanged initial proposals. At negotiations the Employer indicated the potential for a merger with the BBA Group, a British corporation, which is the parent company of Signature. No time table for such a merger was discussed, but no further bargaining sessions were arranged until mid-April 2001. At that session, the Employer presented the Union with a complete, written final contract offer, which differed significantly from the prior contract between Signature and the Union. The Union stated it would take the final offer back to the membership and attempt to get it ratified, but it never did so.

On July 10, 2001, a merger between BBA/Signature Flight Support and the Employer was completed with eventual plans to consolidate all commercial airline fueling and handling activities under the Employer. The Union was advised that the Employer's name and local management would remain unchanged and that there would be no interruption in the collective bargaining relationship with the Union. However, the Union was informed that the Employer's bargaining representatives would change and contact information was provided for officers of BBA. The Union arranged to meet with the new representatives of the Employer in early September. At that meeting, the Union proposed the concept of a master agreement to cover both the operations of the Employer and Signature. At another meeting in October, the Employer orally agreed with the Union's concept, and the parties discussed

breaking down the Employer's operations into three distinct groups for contract purposes: the ASIG Northwest Group, basically covering the petitioned-for unit; ASIG Non-Northwest Group, covering employees working for Signature with other commercial airlines; and Signature Flight, covering employees working for privately owned airplanes at Metropolitan Airport. The master contract for each group would contain the same provisions as to grievance procedure, recognition, and all other items, except wages and benefits, which would be negotiated separately for each group. Although there was tentative agreement between the Employer and the Union regarding wages and benefits for the petitioned-for employees in the ASIG Northwest Group, nothing was reduced to writing or executed by the parties. The Union is still working on a draft of a proposed master contract for consideration by the Employer. Although managerial responsibility over some Signature employees at the Northwest fuel dump and Mesaba Airlines has been recently transferred to the Employer, these employees remain covered by the Signature collective bargaining contract.

When a petition is filed for an election among a group of employees who are covered by a collective-bargaining contract, the Board must decide whether the asserted contract exists in fact and whether it conforms to certain requirements. If the Board finds that the contract does exist and that the requirements are met, the contract is held a bar to an election. This is known as the contract-bar doctrine. *Hexton Furniture Co.*, 111 NLRB 342 (1955). The burden of proving that a contract is a bar is on the party asserting the doctrine. "The single indispensable thread running through the Board's decisions on contract bar is that the documents relied on as manifesting the parties' agreement must clearly set out or refer to the terms of the agreement and must leave no doubt that they amount to an offer and an acceptance of those terms through the parties' affixing of their signatures." *Seton Medical Center*, 317 NLRB 87 (1995). A contract must be reduced to writing. An oral agreement does not constitute a bar. *Empire Screen Printing*, 249 NLRB 718 (1980); *Sullivan & Sons Mfg. Corp.*, 105 NLRB 549 (1953). The contract must contain substantial terms and conditions of employment deemed sufficient to stabilize the bargaining relationship. It will not serve as a bar if limited to wages alone, or to one or several provisions not deemed substantial by the Board. *Artcraft Displays*, 262 NLRB 1233 (1982); *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958).

Contrary to the Union's assertion, the recognition agreement between the Employer and Union fails to contain substantial terms and conditions of employment and basically serves as a stopgap measure to allow for continued dues deductions during negotiations for an initial contract. Furthermore, the existing contract between the predecessor employer of the unit employees, Signature, does not constitute a bar to the instant petition because the Employer never adopted the contract, and at best merely continued in effect certain terms and conditions of employment. The merger of Signature's parent company, BBA, with the Employer does not change that conclusion, as there is no indication that the Employer and Union have agreed to cover the unit employees under the Signature contract. The parties have discussed the creation of a master contract, which would apparently standardize numerous terms and conditions of employment (other than wages and benefits). This master contract would apparently borrow provisions from both the Signature contract and the final offer presented to the Union in April 2001. However, this proposed master contract has yet to be reduced to writing or agreed to by the parties. As the Union's own witness, Ronald Lee Zunk, the Employer's vice president of human resources, testified, there is currently no contract in existence covering the petitioned-for employees.

Consequently, based on the foregoing, the Employer and Union have failed to sustain their burden of establishing that a contract is a bar to the instant petition.

5/ The unit, which consists of approximately 100 employees, appears as stipulated by the parties. However, for purposes of clarity, the unit description covers only those employees who perform work for Northwest Airlines.

347-4001-4300

347-4040-1720-5000

347-4040-5001-5000